

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DEROME MCELROY,

CASE NO. 3:21-cv-05891-DGE

Plaintiff,

## ORDER ADOPTING REPORT AND RECOMMENDATION

## AGENCY,

Defendant.

On December 7, 2021, Plaintiff, proceeding pro se, filed a complaint alleging that he has been “tortured with mind control” for over 30 years by an unidentified government agency.

(Dkt. No. 1.)

On December 15, 2021, Plaintiff filed a motion asking the court to appoint counsel to represent him. (Dkt. No. 7.) The Court has discretion to appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1), but an appointment of counsel should only be granted under “exceptional circumstances.” *Agyeman v. Corrections Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004). When determining whether exceptional circumstances exist, the

1 Court considers “the likelihood of success on the merits as well as the ability of the petitioner to  
2 articulate his claims pro se in light of the complexity of the legal issues involved.” *Weygandt v.*  
3 *Look*, 718 F.2d 952, 954 (9th Cir. 1983). The Court finds no such exceptional circumstances  
4 here.

5 On December 21, 2021, United States Magistrate Judge J. Richard Creatura issued a  
6 report and recommendation (“R&R”) recommending that Plaintiff’s complaint be dismissed  
7 without prejudice because the Court lacks subject matter jurisdiction. (Dkt. No. 8.) Judge  
8 Creatura found that Plaintiff did not specify the basis for jurisdiction and did not list the statutes  
9 under which he seeks relief or the defendant’s name and identifying information. (*Id.* at 1.)  
10 Judge Creatura found that granting Plaintiff leave to amend his complaint would be futile  
11 because Plaintiff’s claim was patent was patently frivolous. (*Id.* at 2.) Plaintiff did not respond  
12 to Judge Creatura’s R&R.

13 The Court, having reviewed the Report and Recommendation of Chief Magistrate Judge  
14 J. Richard Creatura and the relevant record, does hereby find and ORDER:

- 15 (1) The Court DENIES Plaintiff’s Motion to Appoint Counsel (Dkt No. 7.)
- 16 (2) The Court ADOPTS the Report and Recommendation.
- 17 (3) This matter is DISMISSED without prejudice and the case is CLOSED.
- 18 (4) The Clerk is directed to send copies of this Order to Plaintiff and Judge Creatura.

19 Dated this 11<sup>th</sup> day of January, 2022.

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David G. Estudillo  
United States District Judge